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In the Matter Of

Restoring Internet Freedom

) **WC Docket No. 17-108**
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Written Ex Parte of the Benton Foundation

The Benton Foundation offers the following for the newly-opened WC Docket No. 17-108.

In remarks¹ delivered April 26, 2017, Federal Communications Commission Chairman Ajit Pai indicated that since and because of the Commission's 2015 Open Internet Order,² broadband infrastructure investment has declined. However, recent analysis³ indicates the Chairman is mistaken. As reported in USA Today, a number of factors other than the Commission's Open Internet Order factor into the decline Chair Pai is using to launch a new proceeding on net neutrality rules:

- Much of the decline in broadband infrastructure investment is due to AT&T. Analysts point out, however, that like other large carriers it was engaged in a competitive shift that likely played a role:
 - In May 2014, before the Commission's 2015 Open Internet Order, AT&T announced a \$48.5 billion purchase of DirecTV so it could bundle its wireless and broadband services with DirecTV's video offerings.

¹ Pai, Ajit. "The Future of Internet Freedom" (April 26, 2017) http://transition.fcc.gov/Daily_Releases/Daily_Business/2017/db0426/DOC-344590A1.pdf accessed on May 5, 2017.

² In the Matter of Protecting and Promoting the Open Internet (GN Docket No. 14-28) (FCC 15-24) adopted February 26, 2015. (Open Internet Order)

³ Snider, Mike. "Did Net neutrality keep broadband out of low-income neighborhoods, as FCC claims?" USA Today (May 5, 2017) <https://www.usatoday.com/story/tech/news/2017/05/05/did-net-neutrality-keep-broadband-out-low-income-neighborhoods/100979808/>

- In October 2016, AT&T announced plans to buy Time Warner for \$85.4 billion in order to be ready for a world where people predominantly watch video online and on their mobile devices.⁴
- George Washington Institute of Public Policy senior fellow Hal Singer said newer broadband networks may not require as much capital expenditure

In addition, there are a number of indicators that U.S. broadband infrastructure investment is not declining:

- Census data submitted by U.S. broadband and telecom companies shows they invested more than \$87 billion in capital expenditures in 2015 (the most recent year available), the highest in 10 years.
- Free Press found publicly-traded companies' total investment rose 5.3% between the two-year periods of 2013-14 and 2015-16.
- Comcast increased its outlays by double digits between 2014-2016.
- Even though Verizon had a smaller broadband footprint, overall capital investments for those three years were relatively consistent

USA Today includes these conclusions from industry watchers:

- "At the end of the day, it's hard to say if Title II had an impact on these bellwether names or if the decline mentioned was more of a reaction to the strategy that each of these companies had," says Angelo Zino, equity analyst with CFRA Research.

⁴ Gottfried, Miriam. "AT&T Dreams of a Hollywood Ending" Wall Street Journal (October 23, 2016)
<https://www.wsj.com/articles/at-t-dreams-of-a-hollywood-ending-1477267168>

- "You are going to hear a lot of posturing when it comes to the attempts to stifle some of those regulations," said Tuna Amobi, an equity analyst at CFRA Research. "What we saw ultimately was that, frankly, it was more or less a lot of noise." The market is simply too competitive not to invest, he says. "No one wants to be left behind."
- "The idea that there's a nuclear winter in broadband, or even just in rural broadband, because of the Title II classification just doesn't make sense," said Kevin Werbach, an associate professor of legal studies and business ethics at The Wharton School at the University of Pennsylvania.
- Craig Moffett, partner and senior analyst at research firm MoffettNathanson, says that "it's impossible to tell" whether the Open Internet rules have affected investment. "There's no way to provide a serious answer that rises above simply trying to reverse engineer the answer you want to find," he said.

If there is one thing the USA Today article makes clear it is this: the Commission has insufficient data to indicate that U.S. broadband infrastructure has declined and, so, has no cause to launch a proceeding to change the only set of net neutrality rules that have survived a court challenge to date.

Sincerely,

_____/s/____

Kevin Taglang

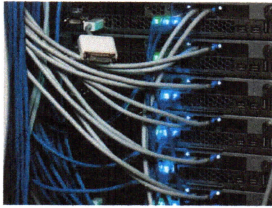
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Did Net neutrality keep broadband out of low-income neighborhoods, as FCC claims?

Mike Snider, USA TODAY Published 6:05 a.m. ET May 5, 2017 | Updated 2 hours ago



(Photo: Michael Bocchieri, Getty Images)

A big reason current net neutrality rules need to get the boot, says the head of the Federal Communications Commission, is that they're curbing broadband investment in low-income neighborhoods — cutting off important information and services 21st-century citizens access via high-speed Internet.

But were these 2015 rules, which aimed to prevent companies that bring Internet into homes from favoring their own content over others, really the culprit?

A review of broadband investment over the past two years paints a more complicated picture. One study of the largest carriers, the basis for the FCC's claim, does show investment fell over the two-year period the rules were in effect.

But that was largely due to AT&T. It's blamed the Open Internet rules for decreased broadband investment. Analysts point out, however, that like other large carriers it was engaged in a competitive shift that likely played a role — two mammoth acquisitions including the \$85.4 billion deal for Time Warner. At the same time, Comcast — another big spender of broadband investment — increased its outlays by double digits.

"You are going to hear a lot of posturing when it comes to the attempts to stifle some of those regulations," said Tuna Amobi, an equity analyst at CFRA Research who tracks companies such as Comcast and Charter Communications (which want the rules repealed) and Netflix (which supports them).

"What we saw ultimately was that, frankly, it was more or less a lot of noise," Amobi said. The market is simply too competitive not to invest, he says. "No one wants to be left behind."

Disagreement over what actually happened since the rules were passed means both sides have ample debate points as they enter into a fight over the rules' repeal, which could happen by year end.

FCC Chairman Ajit Pai argues that the rules, which rely on utility-style authority based on Title II of The Communications Act of 1934, overburden Internet service providers (ISPs) and kept them from investing in low-income rural and urban areas. Democrats say that didn't happen. And they consider the current regulations as critical to protecting consumers from net providers blocking or slowing some content, while possibly favoring their own.

Public comment for the rules has already begun. The last time the public was invited to voice their views on net neutrality, the FCC received nearly 4 million comments. And these extenuating factors also mean that if the rules are repealed, it's questionable whether increased broadband investment will necessarily follow.

"The idea that there's a nuclear winter in broadband, or even just in rural broadband, because of the Title II classification just doesn't make sense," said Kevin Werbach, an associate professor of legal studies and business ethics at The Wharton School at the University of Pennsylvania.

Related:

[The FCC wants to repeal net neutrality, and it just made its opening move \(https://www.usatoday.com/story/tech/news/2017/04/26/fcc-head-lays-out-plan-overturn-net-neutrality/100936350/\)](https://www.usatoday.com/story/tech/news/2017/04/26/fcc-head-lays-out-plan-overturn-net-neutrality/100936350/)

'Inflection point'

The FCC began its rule-making process in 2014 and rules were approved in 2015 under the helm of Chairman Tom Wheeler, a Democrat. According to the study that's the basis for the FCC chairman's claim, U.S. broadband capital investment by the major providers dropped 5.6% by 2016 from 2014.

Net neutrality regulations may not have necessarily caused lower spending, but the timing suggests some correlation, says George Washington Institute of Public Policy senior fellow Hal Singer, who compiled and analyzed the data, factoring out other investments, using the companies' securities filings.

A similar survey by USTelecom, a trade association that counts among its members AT&T, Verizon, CenturyLink and Frontier, found that broadband capital expenditures declined nearly \$1 billion in 2015 to \$76 billion, the first decline since 2009.

"Something happened in 2015, I would call it an inflection point, where (spending) had been growing in the field and stopped," Singer said told USA TODAY.

Another possible factor: newer broadband networks may not require as much capital expenditure, he says.

And while some ISPs slashed spending, others spent hard.

Third-biggest spender Comcast's broadband capital investment increased by 19%, and Charter Communication's rose 40%, though to a much lower level.

These were offset by a decline at AT&T, which spent 16% less on broadband investment during the period but was still the biggest spender. No. 2 spender Verizon had a slight decline (0.8%) in broadband investment over the 2014-2016 period. And No. 4. spender Sprint's investments dove an estimated 63%.

"At the end of the day, it's hard to say if Title II had an impact on these bellwether names or if the decline mentioned was more of a reaction to the strategy that each of these companies had," says Angelo Zino, equity analyst with CFRA Research who tracks companies such as AT&T and Verizon

BROADBAND INVESTMENTS UNDER NET NEUTRALITY

During the two years under Open Internet rules (2014-2016), large broadband carriers' investments fell, mostly due to AT&T investments, according to one study.

ISP	\$ change	% change
AT&T	◀ -\$3.4B	-16%
Verizon	◀ -\$132M	-0.8%
Comcast	▶ +1.2B	19.2%
Sprint	◀ -\$2.4B	-62.7%
Time Warner Cable	◀ -\$340M	-8.3%
Total of 12 ISPs	◀ -\$3.6B	-5.6%

SOURCE Hal Singer, GW Institute for Public Policy
Frank Pompa, USA TODAY



USA TODAY

Among the big changes going on at the time: AT&T completed its \$48.5 billion acquisition of DirecTV in July 2015 and, in October 2016, bid for Time Warner, a deal that is currently being reviewed by regulators. During that time, AT&T's broadband spending declined \$3.4 billion to \$17.8 billion in 2016.

Also, Verizon sold a portion of its FiOS network for \$10.5 billion to Frontier Communications. Thus, Verizon had a smaller broadband network to invest in. Its overall capital investments for those three years were relatively consistent, at just over \$17 billion.

Craig Moffett, partner and senior analyst at research firm MoffettNathanson, says that "it's impossible to tell" whether the Open Internet rules have affected investment. "There's no way to provide a serious answer that rises above simply trying to reverse engineer the answer you want to find," he said.

The ISPs say it's crystal clear, however -- the regulations went up, and spending went down.

" When Title II, the really stringent rules on Net neutrality were imposed by the prior FCC, you saw investment decrease and the numbers are indisputable," AT&T CEO Randall Stephenson on CNBC Thursday.

Other ISPs including Comcast have mentioned in financial filings that the net neutrality rules were among regulations could have an effect on their businesses.

Several smaller ISPs have told the FCC they have put off expanding services and a group of 22 providers said they have found it hard to get financing because of the regulations, Pai said last week. The current rules, he said, are "widening the digital divide in our country and accentuating the practice of digital redlining—of fencing off lower-income neighborhoods on the map and saying, 'It's not worth the time and money to deploy there'."

But FCC Commissioner Mignon Clyburn, a Democrat who voted to pass the 2015 rules, noted there are 700 small, rural broadband providers operating among the net economy of startups and innovators "that have banked on an open, permission-less platform that has netted countless benefits for us all."

Other data cited by supporters of the current rules suggest that investment has actually increased since the rules' adoption. Public interest group Free Press found publicly-traded companies' total investment rose 5.3% between the two-year periods of 2013-14 and 2015-16. And Sen. Ed Markey, D-Mass., cites census data submitted by U.S. broadband and telecom companies showing they invested more than \$87 billion in capital expenditures in 2015 (the most recent year available) and the highest in 10 years.

But those statistics look at total investments not just broadband spending and don't take into account some of the major business moves made by ISPs during those years, George Washington's Singer says.

The common ground? The need for more broadband.

The most recent FCC Broadband Progress Report found that about 34 million Americans, about 10% of the population, lacked access to what the agency considered the minimum standard for high-speed broadband (speeds of 25 Megabits per second download and 3 Mbps upload), at the beginning of 2015. That's up from the 17% in the previous year.

The report painted a picture of a troublesome "divide" for Americans living in rural areas and tribal lands, and low-income urban residents, as they were less likely to have access to high-speed broadband, said Wheeler, Pai and Clyburn upon its release last year.

The best remedy would be legislation from Congress that finds a lasting compromise, Singer says, which could put an end to the FCC's need to revisit net neutrality with each change in the political winds. "Can we come up with something less invasive," he said, "that will make sure these edge providers feel confident in investing but at the same time doesn't undermine the ISPs?"

Read more:

[What is net neutrality and what would its reversal mean?](https://www.usatoday.com/story/tech/news/2017/04/26/what-net-neutrality-and-what-would-its-reversal-mean/100930220/)

[\(https://www.usatoday.com/story/tech/news/2017/04/26/what-net-neutrality-and-what-would-its-reversal-mean/100930220/\)](https://www.usatoday.com/story/tech/news/2017/04/26/what-net-neutrality-and-what-would-its-reversal-mean/100930220/)

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